

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ELEANOR BOZZACCO and DEPARTMENT OF VETERANS AFFAIRS  
VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, NJ

*Docket No. 99-1745; Submitted on the Record;  
Issued September 11, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that the Office improperly determined that appellant's application for review was untimely filed.

In its most recent merit decision, dated February 18, 1998, the Office issued a decision denying modification of its prior decision dated January 6, 1997 on the grounds that no new evidence was submitted and the argument given was insufficient to warrant modification of the prior decision. By letter dated May 7, 1998, appellant's attorney requested an appeal to the Board which was docketed as appeal No. 98-1781.

In a November 5, 1998 request for reconsideration which was received by the Office on November 9, 1998, appellant's attorney submitted a copy of a report from Dr. Richard A. Boiardo, a Board-certified orthopedic surgeon.

On December 28, 1998 the Board issued an order dismissing the appeal in Docket No. 98-1781 at appellant's attorney's request.

In a letter dated January 11, 1999 and received by the Office on January 15, 1999, appellant's attorney noted that the appeal was dismissed and requested that the Office adjudicate appellant's request for reconsideration.

In a decision dated January 21, 1999, the Office found that appellant's request for reconsideration was untimely and the evidence submitted did not establish clear evidence of error.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.<sup>1</sup> As appellant filed her present appeal with the Board on April 14, 1999, the only decision properly before the Board is the Office's January 21, 1999 decision denying appellant's request for reconsideration.

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).<sup>2</sup> The Office will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>3</sup> When an application for review is untimely, the Office undertakes a limited review to determine whether the application presents clear evidence that the Office's final merit decision was in error.<sup>4</sup>

In this case, the Office issued a merit reconsideration decision denying appellant's claim on February 18, 1998. On January 15, 1999 the Office received a letter dated January 11, 1999 from appellant's authorized representative, requesting a decision on appellant's request for reconsideration. This request was less than one year from the date of the last merit decision. The Board finds that under these circumstances, the November 5, 1998 and January 11, 1999 letters constitute timely requests for reconsideration.<sup>5</sup>

As appellant's request for reconsideration of the Office's decision was timely, the Office must evaluate the request under the appropriate standard. The "clear evidence of error" standard utilized in this case is appropriate only for untimely reconsideration requests. Accordingly, the case will be remanded to the Office for proper consideration of appellant's timely request for reconsideration of the Office's decision dated February 18, 1998. After such further development as it deems necessary, the Office should issue an appropriate decision.

---

<sup>1</sup> *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.607(a) (1999).

<sup>4</sup> *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>5</sup> *See Vicente P. Taimanglo*, 45 ECAB 504 (1994).

The decision of the Office of Workers' Compensation Programs dated January 21, 1999 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
September 11, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member